

Guo (Migration) [2018] AATA 2807 (28 June 2018)

DECISION RECORD

DIVISION: Migration & Refugee Division

APPLICANTS: Ms QIONG GUO
Miss YUEYUE GUO
Miss XINLING GUO

CASE NUMBER: 1700033

DIBP REFERENCE(S): BCC2016/3339621

MEMBER: Adrienne Millbank

DATE: 28 June 2018

PLACE OF DECISION: Brisbane

DECISION: The Tribunal affirms the decisions not to grant the applicants Partner (Temporary) (Class UK) visas.

Statement made on 28 June 2018 at 12:07pm

CATCHWORDS

Migration – Partner (Temporary) (Class UK) visa – Subclass 820 (Spouse) – Genuine spousal relationship – Introduction by third party – Marriage certificate – Joint bank account – Evidence of sponsor’s contribution – Cash transactions with no receipts – Separation of wealth and assets – Knowledge of applicant’s wealth – Evidence of family recognition – Sponsor’s diary extracts – Decision under review affirmed

LEGISLATION

Migration Act 1958(Cth), ss 5F, 65, 359A
Migration Regulations 1994 (Cth), r 1.15A, Schedule 2 cls 820.211, 820.221

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision of a delegate of the Minister for Immigration on 19 December 2016 to refuse to grant the applicants Partner (Temporary) (Class UK) visas under s.65 of the *Migration Act 1958* (the Act).
2. The first named applicant applied for the visa on 8 October 2016 on the basis of her relationship with her sponsor. At that time, Class UK contained only one subclass: Subclass 820 (Partner (Temporary)). The criteria for the grant of this visa are set out in Part 820 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria.
3. The Delegate refused to grant the visas on the basis that the primary visa applicant (the applicant) did not satisfy cl.820.211(2)(a). Insufficient evidence was provided to convince the Delegate that the applicant was the spouse or de facto partner of the sponsor.
4. The Tribunal wrote to the applicant, through her representative, on 31 January 2018, requesting her to provide, by 14 February 2018, further information to support her claims to be in a spouse or de facto relationship with the sponsor. On 13 February 2018 the Tribunal received a request for an extension of time to provide the information. The Tribunal agreed to the request and granted an extension to 28 February 2018. Further information was provided on 28 February 2018.
5. The applicant appeared before the Tribunal on 3 May 2018 to give evidence and present arguments. The Tribunal also received oral evidence from the sponsor. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages.
6. A further document was provided to the Tribunal on 10 May 2018.
7. On 25 May 2018 the Tribunal wrote to the applicant, through her representative, pursuant to s.359A of the Act, inviting her to comment or respond to information provided by the sponsor at hearing that would lead or could contribute to the decision under review being affirmed. On 8 June 2018 the applicant, through her representative, requested an extension of time, which was granted. Written submissions responding to the s.359A letter, and further documents, were provided to the Tribunal on 22 June 2018.
8. An adjournment was granted early in the hearing, following which the applicant claimed she was experiencing difficulties understanding and properly responding to questions through the interpreter. These questions were about the applicant's relationship with Mr Christopher Kent, the person who introduced her to the sponsor. On being advised that the interpreter is NAATI level 3 accredited and highly regarded, and that the Tribunal had no problems with the interpreter, the applicant chose to proceed rather than adjourning until an alternative, telephone, interpreting service could be organised.
9. In one of the written submissions provided after the hearing, on 22 June 2018, the applicant, through her representative, further complained about 'defective interpreting' at the hearing. The Tribunal notes again that the applicant was offered the choice at hearing of an alternative, TIS interpreter, but chose to continue the hearing with the original interpreter. The Tribunal ensured at hearing that areas of confusion the applicant claimed arose early in the hearing were clarified to the satisfaction of the applicant. The Tribunal does not accept

that communication between the Tribunal and the applicant was constrained by 'defective interpreting'.

10. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

CONSIDERATION OF CLAIMS AND EVIDENCE

11. The applicant was born in July 1970 in Hunan Province, China and was 45 years old at the time of application and 47 at the time of decision. She declared one previous marriage, which ended in divorce in 2014. Her two daughters from this marriage, born in 1998 and 2005, are the secondary applicants.
12. The sponsor was born in February 1953 in Cardiff, New South Wales, and was 63 years old at the time of application and 65 at the time of decision. He declared two previous failed relationships; one marriage, which ended in divorce after 13 years, and a de facto relationship that ended after nine years. He has no children.
13. The applicant first arrived in Australia on 18 April 2012 on a Tourist (subclass 676) visa, with her former husband and two daughters. On this trip, they spent time in Queensland, and also visited Sydney, Melbourne and New Zealand. They divorced in 2014.
14. The applicant returned to Australia, to Perth, from 8 July – 15 July 2015, on a Visitor (subclass 600) visa. On this trip she met a business broker, Mr Christopher Kent, for whom she facilitated a trip to China so he could meet politicians and officials in the agricultural business. Mr Kent is an old oil rig colleague and friend of the sponsor. The applicant returned to Australia, to Queensland, from 23 March – 10 April 2016, where she first met the sponsor, on 25 March 2016, following their introduction, arranged by Mr Kent, through an internet application.
15. The parties claim that they started living together when the sponsor returned on her next trip, from 17 May – 6 June 2016. They claim the sponsor proposed marriage on 5 June 2016. They married on 8 August 2016, in Noosa, on the applicant's next trip, from 16 July – 28 August 2016. The applicant returned to Australia on 13 September 2016, and the visa applications were lodged on 8 October 2016.
16. Evidence was provided that a business, a fish and chip shop in Tewanin, was purchased in January 2017 through a family trust comprising the parties and the applicant's two daughters. Evidence was provided that a house near the business was purchased in the parties' joint names in May 2017. Evidence was also provided that the second-named applicant was enrolled at Sydney University in 2016 and 2017, and that the third-named applicant was enrolled in a primary school in Tewanin on 20 October 2016.
17. The issue in the present case is whether the applicant was in a genuine spousal relationship with the sponsor at the time of application and this decision.
18. Clauses 820.211(2)(a) and 820.221 require that at the time the visa application was made, and at the time of this decision, the applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. In the present case the applicant claims to be the spouse of the sponsor who is an Australian citizen by birth.
19. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there

must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a)-(d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the parties' household and their commitment to each other as set out in r.1.15A(3), which is extracted in the attachment to this decision.

20. If the parties are validly married, they may meet the requirements of a spousal relationship, but not a de facto relationship. A copy of a Queensland marriage certificate was provided, certifying that the parties married at the Noosa-Cooroy Botanical Gardens on 8 August 2016. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).

Are the other requirements for a spousal relationship met?

Financial aspects of the relationship

21. On her application form the applicant stated: 'We opened a joint account and deposited into this account every month for daily expenses. We shared our expenses and raise our daughter together using our income'. In a written submission provided to the Tribunal, the parties' representative argued 'the applicants benefit from the sponsor as a husband, father and provider in the family'. No evidence was provided however that the sponsor has contributed anything, in a monetary or financial sense, to the relationship. At hearing, the sponsor stated that he used takings from the business for his personal expenses, and that the business account, statements from which were not provided, was used to pay some household expenses including utilities.
22. At hearing, the applicant acknowledged that she purchased the fish and chip shop for the purpose of providing an occupation for the sponsor following the end of his employment in a small gardening business, and that the fish and chip shop had struggled to break even. She acknowledged also that she paid for the other significant asset, the house near the business.
23. In a statutory declaration signed on 28 February 2018, the applicant declared: 'Financially, I know my husband is capable and hardworking and does not live beyond his means. When he lost his job, due to his age, it was hard for him to look for another'. 'Unfortunately, due to our old ways, we pay for a lot of things in cash and sometimes have no receipts for the payments'. 'Unless I am physically present and can show official documentation, I cannot obtain Chinese bank statements due to strict banking policy'.
24. At hearing the applicant confirmed that she is independently wealthy, and owns hotels, a kindergarten and a number of houses in China. She advised that in order to fund her family life in Australia, she withdraws cash from her bank accounts in China up to the limit allowed by China's laws, and that her sister and friends in China provide her, as needed, with further amounts, which she reimburses.
25. A copy of a letter from an Australian bank was provided, dated 2 August 2016, confirming that the parties had opened a joint account. Statements of transactions were provided for the periods 8 August – 3 November 2016, and 2 August 2017 – 2 February 2018. These showed a number of ATM and transfer deposits into the account, in the order of \$1000 or \$2000, and up to \$10,000. The applicant confirmed that these deposits and transfers were from her accounts in China. The statements show a lot of cash withdrawals, and a number of small personal-type purchases. They do not, as noted, show that income earned by the sponsor income has been deposited into the account, or that household expenses such as furniture or utilities, have been paid through it. They do not show that the second-named applicant,

described by the parties in their written statements as 'their daughter', was supported through the parties' joint account.

26. At hearing, the parties confirmed that all of the second-named applicant's tuition and accommodation costs were paid by the applicant, directly from her own bank accounts. The sponsor advised that household costs such as utilities were paid from the fish and chip shop business account, and that he used takings from the shop for personal expenditure. The parties acknowledged that the joint account was used mainly by the applicant. The sponsor advised that he purchased his car before the marriage. The parties confirmed that this car had subsequently been insured in joint names. The parties advised that they did not purchase furniture together for the house they purchased as a family. The sponsor advised that he brought some furniture from the previous rental property.
27. A statement was provided from a family trust, as at 31 August 2017, showing that the applicant deposited funds for the settlement on the house the parties purchased on 8 August 2017. At hearing, the applicant advised that the trust comprised herself, her two daughters and the sponsor, and that the four of them owned equal shares in the business and the nearby residential property.
28. When the Tribunal asked the applicant whether the sponsor had a personal bank account, she advised that he did not. She stated that he closed his personal account when they opened the joint account. She subsequently acknowledged that he did have a 'card' attached to a bank account in his name but claimed that he no longer used the account because he had overdrawn on his credit card, when he set up the rental property that the applicant and her daughter first moved into with him. She stated that she would have paid the debt, but that the sponsor wanted to pay it off from earnings from the fish and chip shop. When the Tribunal asked whether the sponsor had any assets or savings she stated that he did not. She advised that he was working with his nephew in a gardening business when she first met him but that the business relationship soured; that he had no savings or money from this business; and did not own any property. She advised that he was still paying off his car.
29. The applicant subsequently remembered that the sponsor had told her that he had \$50,000 in 'gold'. She stated he told her that he had handed this over to his brother, and she didn't know anything more about it. The sponsor confirmed that he had signed over shares he had in a goldmine to his brother 'for safekeeping', before marrying the sponsor. He claimed that his motivation was tax avoidance, and that he might not have actually got around to signing all of the documents required to hand the shares over. He advised that he received no income from these shares.
30. When the Tribunal asked the sponsor about the assets owned by the applicant, he stated that she owned hotels and a kindergarten in China. He subsequently remembered that she also owned a house or two. He acknowledged that he knew that his wife was wealthy, but stated that he had no idea about the extent of her property and business assets, and her overall wealth. When asked how much she had in her personal bank accounts, he stated, again, that he had no idea.
31. In the s.359A letter sent on 22 May 2018, the Tribunal invited the applicant to comment on this response, as it indicated that she may not be in a genuine relationship with the sponsor. In a written submission provided through her representative dated 22 June 2018, the applicant claimed that she had in fact informed the sponsor about her eight apartment investment properties, her hotel and her kindergarten, and that he said he had 'no idea' about her 'bank balance' because this varied over time according to inflows and outflows from her investment portfolio. She argued also that her assets are in China, which is 'far away'. She argued further that the sponsor is 'nonchalant about wealth and status'. The sponsor, in his written submission provided on 22 June 2018, stated that the applicant's

investment portfolio is complex and changes on a daily basis and it is for this reason that he said he had 'no idea' about his wife's wealth.

32. The Tribunal finds these explanations, including that the sponsor is 'nonchalant' about wealth and status, disingenuous and unconvincing. The Tribunal finds that if the parties were in a genuine spousal relationship, the sponsor would have been able to provide at hearing at least an estimate of something so central to their life opportunities as his wife's wealth.
33. The Tribunal does not find the sponsor's real or claimed ignorance and indifference, displayed at hearing, regarding his wife's wealth and financial affairs to be consistent with his claims to be in a genuine spousal relationship.
34. The Tribunal accepts that the parties have joint ownership, along with the applicant's children, of a house and another major asset, the small business, and that the parties therefore have legal obligations in respect of each other. The Tribunal further accepts that the sponsor draws cash from the business for his personal and household use, and to this extent the parties share day-to-day expenses.
35. While accepting that the parties share some financial commitments, the Tribunal does not find that the parties have pooled their resources as a genuine spousal couple. The applicant's assets and wealth in China, and the sponsor's shares in a gold mine, have been kept separate from the relationship.

Nature of the household

36. Two receipts in joint names were provided for the delivery of domestic gas cylinders delivered to Tewanin addresses in 2016 and 2017. A receipt for a water bill, in joint names, for the same Tewanin address, was also provided. As noted above, evidence was provided that a house was purchased in August 2017, in joint names. The Tribunal accepts that the parties lived in the same house during the applicant's visit from 17 May – 6 June 2016, and that they have lived in the same rented and purchased houses in Tewanin since the applicant's return to Australia on 16 July 2016.
37. The parties claimed in their written submissions that the sponsor has acted as a father to the applicant's daughters. The Tribunal accepts that the sponsor has helped to care for and entertain the applicant's younger daughter, who was 11 years old when she met the sponsor, but does not accept that he has had much to do with the applicant's older daughter, who was nearly 18 years of age when she met the sponsor and has lived in Sydney since arriving in Australia. At hearing, the sponsor advised that the older daughter was studying 'Arts', and that she had studied history the previous year, but was unable to provide further detail regarding her studies. He acknowledged at hearing that he has contributed nothing, financially, to the support of the applicant's older daughter, and that the applicant financially supports both of her daughters. The Tribunal notes that the applicant's daughters have a father in China, with whom they have maintained contact, and that the sponsor advised at hearing that he met the applicant's former husband when he collected his younger daughter, at an airport in China in 2017.
38. The Tribunal accepts that the parties shared housework in the houses they have shared since May 2016. The Tribunal accepts that the sponsor has got along with the applicant's younger daughter, but does not find that this shows the parties lived together as a spousal couple in a household where they shared responsibility for the care and support of children.

Social aspects of the relationship

39. Photos were provided of the parties' wedding, attended by the sponsor's sister, the applicant's younger daughter, and the friend and business broker who arranged the parties' introduction. Photos were also provided of the parties with the applicant's younger daughter, at home, of the parties on outings with the applicant's daughter, and of the parties with the applicant's church friends.
40. In a written submission to the Tribunal the parties' agent stated 'The parties have made strong attempts to make their marriage be known including two visits to China'. At hearing the sponsor stated that he met the applicant's sister, on one of these two trips in 2017, but not her father, because her father disapproved of the marriage. The sponsor stated that she had met the sponsor's sister, but that they had had no social contact with her since the sponsor's falling-out with his nephew over their gardening business. She stated that she had met two of his friends, but that they lived in Perth. She stated that in Tewantin, she socialised mainly with the Chinese-background fellow congregants at the Christian church, where she attended weekly bible studies.
41. Two statutory declarations were provided by the friend and business broker who brought the parties together. In the first, signed on 10 October 2016, he declared that the parties 'compliment (sic) each other's nature in everything they do from keeping house to being out socialising'; that the sponsor 'has absolutely embraced the roll (sic) of being a Step Dad'; and the marriage was 'rock solid'. In the second, signed on 28 February 2018, he stated 'I introduced them, witnessed them fall in love and get married', and 'I want to ensure that they are kept happily together in Australia'. He declared 'they are honestly a couple who are in a continuing, everlasting, genuine married spousal relationship'. The Tribunal places little weight on these declarations, given the different accounts provided by the parties, discussed below, regarding Mr Kent's involvement in introducing the parties and setting up the relationship.
42. Further statutory declarations signed in February 2018 were provided, from members of the applicant's church and bible-study group and a business friend of the sponsor, in which the declarants stated that they had observed the parties together, and to be in a relationship. No statutory declaration or written statements of support were provided by any family members.
43. The Tribunal accepts that friends of the parties, and the friend and business broker who introduced them, support the visa application. The Tribunal accepts further, based on the photographic and other evidence, including of trips and outings together, that the parties have organised and participated in social activities together, and that they have been observed in the fish and chip shop together. The Tribunal accepts that the applicant's father disapproves of the marriage and that the sponsor has had a falling-out with his nephew, but nevertheless notes there is little evidence of family recognition of the relationship. The Tribunal finds that the parties have represented themselves to people outside their families as being married to each other, however does not find the parties' recognition as a couple by customers in the fish and chip shop, business acquaintances, and fellow Church congregants of the applicant shows them to be in a genuine spousal relationship.

Nature of persons' commitment to each other

44. Evidence was provided, in the form of travel bookings and photos that the parties, as noted, travelled together to China twice in 2017, from 3 – 26 May and 19 October – 29 November 2017. As noted, the sponsor met the applicant's ex-husband during his visits to China, but not her father. The Tribunal accepts that the parties travelled together but is of the view, for the further reasons discussed below, that this joint travel was for the purpose of gathering evidence for the visa application.

45. The Tribunal found the applicant vague and unforthcoming at hearing when responding to questions about the inception of her relationship. When asked at the outset how she knew Christopher Kent, and the role he played in her meeting the sponsor, she firstly claimed that she didn't know Christopher Kent. She then claimed that he was introduced to her as a friend of a friend, in 2015. She then stated that he is a business broker who approached her in 2015 regarding a deal, and for whom she facilitated meetings to promote his agricultural business, with politicians and officials in China. As noted, she claimed initial difficulty understanding the questions through the interpreter. The initial difficulty the applicant claimed to have experienced was resolved to her satisfaction at the outset of the hearing, and the Tribunal's negative credibility finding is not attributable to poor interpreting.
46. When asked whether Christopher Kent arranged for her to meet the sponsor as a potential marriage partner, she stated that he did not. She stated that she was lonely and depressed following her divorce, and decided to go to Queensland, alone, because it was warm. She claimed that Christopher Kent, as a friend, asked his friend to show her around because she didn't know anyone in Queensland and didn't speak English. She claimed that she was not thinking of marriage at this time. In her application and written relationship statements, she claimed that she spent several days with the sponsor during this visit.
47. The sponsor, however, when questioned subsequently, acknowledged that he agreed to meet the applicant on the understanding that she was seeking a marriage partner. He stated that his friend, Christopher Kent, approached him because he knew he was 'available'. He stated further that he found the proposition agreeable after meeting the applicant, and agreed with his friend that he had 'won the lottery'. He stated that he met the applicant only once, for lunch, during this trip, before she returned to China, and that during this lunch they communicated via an internet translation application.
48. In an undated relationship statement at the time of application the applicant wrote that when she landed at the airport back in China following this first meeting she started missing the sponsor, and that they 'talked endlessly via wechat, video chat every day'. She claimed that 'sometimes he became emotional because of missing me, he cried many times when he saw me in video chat. He even wrote lot of diary for me and read them to me using the most gentle and soft voice in the world. I could not bare leaving him so long and so far, thus, I went to Australia on 16th of May again to see him'. (Sic)
49. In the undated extracts from the sponsor's diaries provided, the sponsor expressed, in poetic language, romantic and sexual love for the applicant. He wrote, for example: 'You came into my life like a river racing to the sea, I became caught up in your embrace ... so love and all its brusies didn't have to choose us, but it did and we are alive and trying to survive, its thorny and loving embrace'... 'Your hand gently touches his body he stirs and speaks your name two lovers awaken to a new day, moving together to embrace each other, as the morning sun embraces the day, they move together ...'. (Sic) The Tribunal asked the sponsor to explain how he came to fall passionately in love, and was moved to write such diary entries, after one lunchtime meeting, during which he and the applicant used a translating application in order to communicate with each other. The sponsor stated that he didn't fall in love with the applicant until he lived with her in the same house for three weeks, from 17 May – 6 June 2016, and that he wrote the diary entries after her second visit, by which time they had cemented their marriage plans.
50. No evidence was provided of the parties' communication with each other following the applicant's return to China after either of her two visits to meet and spend time with the sponsor. In her statutory declaration of 28 February 2018, the applicant declared that they had no record of their chat history because 'I changed phones a lot and (the sponsor's) phone was broken'. The Tribunal finds the sponsor's claims to have been overwhelmed by

romantic love, and the applicant's claims regarding the parties' chat history and often-changed and broken phones, unconvincing.

51. At the time of application the parties claimed to have spent a cumulative total of, at most, 12 weeks in a de facto and spousal relationship. The Tribunal does not find the duration of the parties' claimed relationship at the time of application commensurate with their claim to be in a genuine spousal relationship.
52. In her statutory declaration signed 28 February 2018, the applicant declared: 'Our plan for the future is that we will sell the business eventually so he will have enough time to do painting, which is his real passion. I will spend more time to serve the church, to thank God that I met such a good man'. She declared 'I enjoy how (the sponsor) comes to church with me and holds my hand while we are there'. She claimed at hearing that she converted to Christianity in October 2016, and that her younger daughter converted with her, at the same time. The sponsor subsequently stated that he was a lapsed but still believing Catholic, and that while he had attended one or two parties held on the church grounds, he had never accompanied the applicant to her church services or bible studies. On the younger daughter's school enrolment form, signed by both parties on 20 October 2016, regarding religion and religious instruction, the school was informed that she has 'no religion'.
53. The Tribunal found the applicant an unreliable witness regarding her, the sponsor's, and her daughter's religiosity, and regarding the inception and nature of her relationship with the sponsor. The Tribunal found the testimony and claims made by both parties in their written submissions and other evidence they provided, including the sponsor's diary extracts, to be overblown, unconvincing, and often contradictory.
54. In an undated statutory declaration at the time of application, the applicant stated that on 5 June 2016 'He made a proposal to me, the man I deeply in love with said the most touching words in the world 'will you marry me'. I could feel my heartbeat so fast and burst into tear (sic). 'I do' I answered many times without hesitation. I went back to China the second day to manage my stuff as quick as I can'. The sponsor however confirmed at hearing that he had agreed, at the outset, to meet the applicant as a prospective marriage partner. He stated that he confirmed his agreement to the proposition during the applicant's trip from 17 May – 6 June 2016, and argued that in this sense, he proposed to the applicant. This is not a convincing explanation for the overblown nature of the applicant's claim regarding the sponsor's marriage proposal, and the Tribunal finds it to be fabricated.
55. In response to the s.359 letter inviting the applicant to comment or respond to the information and advice provided by the sponsor, at hearing, about the inception and early development of the relationship, the applicant did not dispute, in the submission of 22 June 2018 provided by her representative, the sponsor's account, but claimed that the inception of the parties' relationship was 'nothing out of the ordinary'. In his written submission provided as an attachment to the applicant's response of 22 June 2018, the parties' mutual friend, Christopher Kent, advised that the applicant had talked to him 'about her failed marriage and how unhappy she was being alone and her reluctance to marry again', and that he 'felt sorry for (the applicant) because she had so much but was so alone emotionally'. He advised that when the sponsor told him she was flying to Queensland, alone, because she was feeling the cold in China, he phoned his friend in Noosa, and arranged for them to meet. He stated that he phoned the parties the evening after they met; that he was happy to learn that they felt attracted to each other during their lunch; and that he then set them up on WeChat so they could chat with each other.
56. The applicant did not, in her written statement provided by her representative on 22 June 2018, dispute the sponsor's account at hearing regarding the inception of the relationship, but claimed there 'was no assumption the initial meeting would transpire any further'. The

Tribunal finds this claim, and Mr Christopher Kent's claim in his written statement provided on 22 June 2018 that he 'had not thought of them as a couple' when he set up the parties' meeting, disingenuous and unconvincing. The Tribunal finds that the evidence suggests that Mr Kent organised the parties' meeting with the prospect of the applicant obtaining an Australian citizen marriage partner.

57. The sponsor, in his written statement provided on 22 June 2018, did not dispute his statements regarding the inception of the relationship at hearing, but repeated that he was 'blown away' by the applicant when he met her for lunch, at a pub in Brisbane.
58. The Tribunal asked the sponsor, at the end of the hearing, what he had discussed with the applicant they would do if the visa was refused; what plans they had. He stated that he had never discussed with the applicant what they would do if the visas were refused. He stated, unequivocally, that he would not go to China to live with the applicant. He explained that he was too old to adjust to life in another country, and he didn't speak the language. The Tribunal finds this attitude inconsistent with the sponsor's claim to be in a genuine, committed, spousal relationship with the applicant.
59. In response to the s.359A letter inviting the applicant to comment on the sponsor's attitude expressed at hearing, the applicant, in the written submission of 22 June 2018 provided by her representative, did not dispute the sponsor's statement or attitude, but claimed that the sponsor was 'intimidated by the process' and that she had in fact discussed with the sponsor what they might do if the visa was refused. The applicant did not divulge the content of these discussions, but argued that it was unfair to expect the sponsor to relocate to China 'at his old age of 65 when he hopes to retire in Australia'. The sponsor, in his written submission of 22 June 2018, stated again that he cannot speak Chinese and that he is too old, at 65, to adapt to a foreign culture. He did not claim, and the Tribunal does not accept, that he was 'intimidated by the process' at hearing.
60. The Tribunal accepts that the parties have lived in the same houses in Tewartin for two years, since May 2016, but does not accept that this shows them to be in a genuine spousal relationship. The applicant during this time was gathering evidence of relationship for the purpose of the visa applications. The Tribunal accepts, on the evidence provided, that on one level, as friends or business acquaintances, the parties may have got on reasonably well, and provided each other with companionship and emotional support. The Tribunal accepts that the sponsor might have established positive, caring relationships with the applicant's daughters. The Tribunal however finds that this has been in the context of a contrived, rather than genuine, spousal relationship.
61. The Tribunal acknowledges that a motive of obtaining a migration outcome does not preclude the possibility of a genuine relationship, but in this case, having considered the evidence, does not find that the parties were in such a relationship at the time of application or this decision. Having considered the circumstances of the applicant, and the relationship, and observed the parties at hearing, the Tribunal is not convinced that either of the parties sees the relationship as long-term.
62. Having considered r.1.15A(3) matters, the Tribunal finds that the parties do not have a mutual commitment to a shared life to the exclusion of all others; and that they are not in a genuine and continuing relationship.
63. On the basis of the above the Tribunal is not satisfied that the requirements of s.5F(2) are met at the time the visa application was made or the time of this decision.
64. Therefore the applicant does not meet cl.820.211(2)(a) or cl.820.221.

65. Alternative criteria in cl.820.211(7), 820.211(8), 820.211(9), 820.221(2), 820.221(3) (death, family violence, child exceptions) are not relevant to the applicant's circumstances, and she has made no claims against these criteria.
66. For the reasons above, the applicant does not satisfy the criteria for the grant of the visa.
67. As the primary applicant does not meet cl.820.211(2)(a) or cl.820.221, the secondary applicants do not meet cl.820.321.

DECISION

68. The Tribunal affirms the decisions not to grant the applicants Partner (Temporary) (Class UK) visas.

Adrienne Millbank
Member

ATTACHMENT - Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;

the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).

- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day to day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).